

ORIGINAL

(S E R V E D)  
( April 24, 2001 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

---

DOCKET NO. 00-03

INLET FISH PRODUCERS, INC.

v.

SEA-LAND SERVICE, INC.

---

ORDER

---

This proceeding was initiated by a complaint filed by Inlet Fish Producers, Inc. ("Inlet Fish")' against Sea-Land Service, Inc., now known as Maersk Sealand ("MSL"). In its complaint, Inlet Fish alleged that MSL transported Inlet Fish's seafood products from Alaska to foreign destinations from June 1996 to August 1996, and that at some point in time, MSL moved identical or similar products for similarly situated shippers, Inlet Fish's competitors, from the same or similar points to the same or similar points. Inlet Fish alleged that MSL permitted the similarly situated shippers to subtract the weight of packaging and wrapping (the 'tare weight') from the weight of the cargo for the purpose of determining freight rates, but that Inlet Fish was not permitted to subtract the tare

weight from its cargo weight when its rates were calculated. Inlet Fish averred that this resulted in it paying higher freight charges than its competitors, and constituted rate discrimination in violation of several sections of the Shipping Act.

Inlet Fish filed the complaint on January 21, 2000, addressing shipments with MSL that had occurred from June to August, 1996. MSL filed a motion to dismiss the complaint for lack of jurisdiction, arguing that Inlet Fish had filed its complaint more than three years after the cause of action accrued, and that the complaint was therefore time-barred under section 11(g) of the Shipping Act, 46 U.S.C. app. § 1710(g) ("[f]or any complaint filed within 3 years after the cause of action accrued . . .").

Presiding Administrative Law Judge Frederick M. Dolan, Jr. denied MSL's motion to dismiss, ruling that the cause of action had accrued not when Inlet Fish's cargo was shipped, but rather when Inlet Fish learned that it had a possible claim against MSL. In so ruling, the ALJ found in favor of Inlet Fish's factual contention that it had not learned of the possible cause of action until 1998, and ruled against MSL's argument that Inlet Fish knew or should have known that it had a cause of action as early as the Fall of 1996.

MSL filed a request for immediate interlocutory appeal of the ALJ's order to the Commission under Rule 153, 46 C.F.R. § 502.153,

which the ALJ granted. The proceeding is thus before the Commission on an interlocutory appeal for the purpose of deciding whether the ALJ was correct in denying MSL's motion to dismiss. The Commission has determined to request additional briefing from both parties to answer certain questions.

The parties are directed to file, two weeks from the date of this order, supplemental memoranda of no more than 20 pages, addressing the following questions:

(1). Whether a cause of action seeking reparations under the Shipping Act accrues differently for claims addressing discrimination or disadvantage under sections 10(b) (6) and 10(b) (12) than for claims addressing rebates and false weighing under sections 10(b) (2) and 10(b) (4).

(2). If so, whether a cause of action seeking reparations for a claim of discrimination or disadvantage accrues when the party discovered that it may have been injured, or should have discovered that it may have been injured. The parties should explain why court cases addressing other statutory schemes should apply to section 11(g) of the Shipping Act.

(3). Whether the portion of Inlet Fish's complaint seeking relief other than the payment of reparations is subject to the three-year period established in section 11(g).

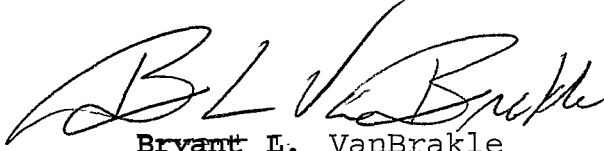
Both parties are directed to note that argument on issues other than those raised by these questions will be disregarded.

The ALJ's initial decision in this proceeding was due on January 30, 2001. The Commission extends until January 30, 2002, the deadline for the issuance of the ALJ's initial decision, and

until May 30, 2002 for the issuance of the Commission's decision.

THEREFORE, IT IS ORDERED, That the parties file supplemental memoranda of no more than 20 pages answering the above-described questions within two weeks from the date of this order.

IT IS FURTHER ORDERED, That the deadline for the issuance of the ALJ's initial decision is extended to January 30, 2002, and until May 30, 2002 for the issuance of the Commission's decision.  
By the Commission.



Bryant L. VanBrakle  
Secretary